

Sand Beach Battle

Austin Chronicle

Line Drawn in Sand Over Boundary Dispute



by [Jenny Staff Johnson](#) October 1, 1999



Mary Arnold, one of the “three ladies”

of lakeside preservation, argues that two of the five acres that Lumbermen’s has contracted to sell to Gables actually belong to the city. The boundary has been in dispute since the late 1800s, and there are competing paper trails and surveys of the land. Credit: Photo By Jana Birchum

Will the rumored Texas A&M alumni center planned for the north side of Town Lake turn out to be just another Aggie joke? In what seems on the surface to be a strange alliance, local parks advocates are supporting the Aggies’ plan, in hopes that the city — or the law — will intervene to stop the planned acquisition of the north part of the Sand Beach Reserve by residential developers Gables Inc., which wants to build a 350-unit apartment complex on the site. The senior vice president of the company that actually owns the land, Lumbermen’s Investment Corp., says the only deal he has going is the one with Gables. “The Aggie thing is really a figment of their imagination,” Philip Breland says. He adds that at a meeting a month ago, he suggested that the Aggies submit their proposal as a backup contract on the land, but that he has not heard from the group since. A&M representatives were unavailable for comment.

Nonetheless, Roberta Crenshaw, the matriarch of Austin parks preservation, wants to see as much of the land as possible preserved in its natural state. “That was the place that Mirabeau B. Lamar sent scouts to look for the place to place the capitol of Texas. They saw that nothing in Texas was as pretty as this,” she said, shortly after her return from Brookline, Mass., where she watched her stepson, U.S. Ryder Cup captain Ben Crenshaw, accept the team’s trophy. “Look to the west and see the violet sunset,” she continued, “look to the east and see where we’ve come from — just the most wonderful place to have the capitol of Texas.”

Crenshaw has fought for 15 years to see the land — which got its name because the water there was so clear it was originally used to filter the city of Austin’s water supply — integrated into the growing Town Lake park system.

The history of the Sand Beach Reserve (known alternately as the Cedar Door Tract, for the homey bar which now occupies the tract), goes back to the Republic of Texas and includes early city planners, a flood that may or may not have moved the bluff near Fifth and Lamar, several former mayors and state attorney generals, parks boosters, downtown developers, and now, Texas Aggies.

Mary Arnold — who along with Crenshaw and Susan Toomey Frost became known as the “three ladies” of lakeside preservation — argues that two of the five acres that Lumbermen’s has contracted to sell to Gables actually belong to the city. The boundary has been in dispute since the late 1800s, and there are competing paper trails and surveys of the land.

The gist of the painfully complex dispute revolves around whether the boundary should match that of a 1916 survey, or the 1848 patent of the land given to subdivision developer James H. Raymond, which refers to the southern boundary as “60 yards below the bluff.” It’s the two-acre difference between the two lines that is currently disputed.

Though the Gables project has not run afoul of any Waterfront Overlay District provisions, parks advocates say that as part of the Town Lake Corridor, the property must be preserved for public use, and they are pressing the boundary dispute issue in hopes of derailing the Gables plans in favor of the Aggies.

Gables plans to make the land the next on its ever-expanding roster of upscale apartment complexes in Dallas, Houston, and Austin, where its properties include a complex that sits next to Central Market, and another on Lake Austin Boulevard, near Exposition Road. But the Aggies are dangling what they hope is an appealing carrot before the city — a proposal to turn the land into a public park and a 20,000 square-foot conference center. The facility would be available for rental, the proceeds from which would, in part, fund scholarships for Austin high school students to attend A&M.

Arnold, a longtime environmentalist and former Parks and Recreation Board member, says she got involved with the land in the early Eighties, when the Holiday Inn near Town Lake wanted to expand its parking lot there. “Roberta [Crenshaw] came to the Parks Board meeting, and she said, “No, no, a thousand times no,” because the site should be used for lakeside beautification. The Parks Board turned down the Holiday Inn’s request.

The ladies really swung into action in 1984, when a group called Town Lake Joint Venture attempted to acquire the property for a 15-story office building, which would have required access through the part of the land indisputably owned by the city, which fronts on Cesar Chavez. (Among the partners in Town Lake Joint Venture was then-mayor Ron Mullen, who was accused of having a conflict of interest for his involvement. His participation in the deal ultimately bankrupted him; Mullen filed for bankruptcy in 1998, still owing Lumbermen’s \$2.3 million.)

Because the building would have required a driveway over city land, the ladies sued, arguing that a roadway for a private office building was not a public use. They kept the issue tied up in court until the Eighties real estate bust forced the Town Lake Joint Venture into bankruptcy, which led to the case being thrown out of court as moot. In the meantime, however, then-attorney general Jim Mattox had become involved in the case after reading about it in the newspaper. It was Mattox's staff who, in researching the case, discovered the boundary dispute which is now the key to how the land will be developed. (Crenshaw said the ladies were targeted for retribution for their activism. "Mayor Ron Mullen threatened to sue each one of us personally for interfering in his business; he wanted to sue us for \$100,000 each. That was kind of scary, and we were supposed to just run and hide. — They thought we were just little old ladies in tennis shoes." Adverse publicity in the *Austin American-Statesman* caused Mullen to drop threats of a lawsuit.)



◆ Gables Inc. is planning to put a 350-unit apartment complex on the Sand Beach Reserve site. ◆ The city of Austin, however, has an ownership claim to two of the five acres (the area below the dotted line). ◆ Meanwhile, parks advocates, and apparently the attorney general, want to see the entire site devoted to public use ◆ perhaps, among other things, as a multimodal transit hub; note the proximity to Amtrak, Seaholm, and the new Lamar bike/pedestrian bridge.

Not So Fast

Despite early surveys showing a more northern boundary to the city's land, the city had nevertheless received legal advice that any case to regain the two acres would be weak because the property line that had been used for legal and commercial purposes had become the de facto boundary. But there's another factor at work, as well. When the state deeded the land to the city of Austin in 1945, it was on the condition that it be used for the public good. If it fails to be used thusly, the law says, it will revert to state ownership. This "reverter clause" has caused much of the intrigue over the reserve. Without it, the city could have decided that the two acres weren't worth fighting for, especially with downtown housing being the order of the day.

But the city has been warned not to do so lightly, in the form of a cryptic, vaguely threatening letter from Attorney General John Cornyn: “If the City of Austin approves such a site plan giving Lumbermen’s or its option holder the right to construct structures for private use on the two acres,” he wrote in a memo, “I will have serious concerns— if such approval is forthcoming [then] I would seriously consider all available legal options.”

So city officials are thinking hard about how to proceed. The council has been taking advice from its lawyers in executive session for months, reportedly on the ins and outs of their legal options. The city has also hired a surveyor to do yet another survey of the property, which is expected to be finished this fall. And all the while, the Gables site plan is moving through the city’s Development Review and Inspection Department.

According to Assistant City Manager Toby Futrell, the city is treating the boundary dispute and the Gables site plan as two separate issues. “On advice from our attorneys, the city has two hats. One is as a regulator, and the other is as a possible owner in a boundary dispute. Those hats should be kept separate,” Futrell says. Which means that while the city tries to decide whether to assert its claim on the land, city staff is working with Gables on getting the glitches out of its site plan. Gables first filed a site plan for the Sand Beach Reserve in August of 1998. They are now on their third six-month site plan cycle, which began when they withdrew and resubmitted their plan last month.

Throughout all this, machinations regarding the ownership of the Sand Beach Reserve continued. Arnold and architect Sinclair Black had persuaded the Citizens’ Bond Advisory Committee to include a request for \$9 million to buy the property, along with other potential parkland sites, in the 1998 bond election. But the money got removed from the package in the council’s great greenspace-acquisition-versus-transportation-funding barter session of ’98.

This summer, the city’s purchase of the Lumbermen’s land resurfaced, for possible inclusion in the list of grant proposals for the TEA-21 federal transportation money. It would have qualified as the home for a new Intermodal transportation station to complement the renovation of Seaholm, long viewed as a possible transportation hub linking rail, bus, cars, pedestrians, and cyclists. An early proposal called for \$7.2 million to buy the whole tract outright, even the two acres that the city may actually own.

A great idea, Lumbermen’s said, but in order to pursue that avenue they asked the city to undertake a risky wager. If the city got the federal money, according to Arnold, Lumbermen’s would sell to the city (and \$300,000 to \$400,000 would go to reimburse Gables for work already completed on the site plan). But if the city didn’t get the grant, it would agree to give up the boundary claim and approve the Gables site plan.

“We persuaded the council that was an unacceptable offer,” Arnold says.

A later version of the plan, that would have had the Gables agreeing to share space with the Intermodal station, was also scotched over the boundary issue.

What Happens Now?

There are a variety of possible scenarios for the Sand Beach property. One, the city drops the boundary issue, approves the Gables site plan, and several hundred new downtown residents will soon have killer views of the lake. Two, the city drops the boundary issue, approves the Gables plan, and the attorney general sues for recovery of the state preserve land. Three, the city presses the boundary issue itself, with a lawsuit or the threat of a state-initiated lawsuit, and Lumbermen's is forced to cut Gables loose, opening the door for the Aggies. Or four, Gables could purchase the property and turn it over to the A&M Foundation, a move which has been pronounced unlikely by Lumbermen's executives.

In fact, none of this is likely to happen, according to Lumbermen's Breland. Things have gotten a little testy between Lumbermen's and A&M, as letters exchanged by their representatives of late indicate. On August 2, Lumbermen's attorney Jay Hailey, of Locke Liddell Sapp, wrote to the A&M Foundation's John Atkinson that, "the incorrect impression has been left with city and state officials that [Lumbermen's] is engaged in negotiation with the A&M Foundation for the sale of the property — these comments — could seriously jeopardize the proposed sale of the property to Gables Realty— [Lumbermen's] has therefore asked me to request that you — cease any further discussions or negotiations with the City of Austin concerning the purchase, development and use of the [Lumbermen's] property."

Breland said the letter was written after a meeting with the Aggies (which was held at the request of city officials), in which it became clear to him that they had neither the organization nor the funding to undertake the project they proposed.

Still, Roberta Crenshaw keeps hoping that her vision for the city can be achieved. "Our greatest challenge in the situation Austin is in today — [is] to make the opportunity for [people] to have a place to enjoy the out-of-doors. You can't put them all in loft apartments. You just can't do that and have a livable city."

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